

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)
)
 v.) CRIM. NO. 05-10188-MLW
)
RICHARD SHIPLEY,)
)
 Defendant.)

GOVERNMENT'S OBJECTION TO ADMISSION OF ATTORNEY SULLIVAN'S
LETTERS AS EVIDENCE

At the final pretrial conference today, defense counsel provided the government with a series of documents which he intends to introduce at trial. With respect to the document marked #2 on the defense exhibit list (hand marked 2.1 - 2.10) and referred to as the "key" piece of evidence in the case by defense counsel, the government does not object to its admission.

However, with respect to the remaining five documents (marked 1, 1a, 1b, 1c and 1d on the defense exhibit list)¹, the government intends to object to their admission for the following reasons:

- 1) they are irrelevant (Fed.R. Evid. 402);
- 2) any probative value is substantially outweighed by the danger of unfair prejudice to the government, confusion of the issues, and misleading the jury (Fed.R.Evid. 403); and

¹These five documents are attached hereto as Exhibit A. They are inflammatory letters written in 2005 by defense counsel in this case to various members of federal law enforcement. The conduct at issue in this case occurred in 2004.

3) they constitute inadmissible hearsay (Fed.R.Evid. 802).

Respectfully submitted,

MICHAEL J. SULLIVAN
United States Attorney

Dated: February 16, 2006

By: /s/ Brian T. Kelly
BRIAN T. KELLY
SABITA SINGH
Assistant U.S. Attorneys

CERTIFICATE OF SERVICE

I, Brian T. Kelly, Assistant United States Attorney, do hereby certify that this document, filed through the ECF (Electronic Case Filing) system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and that paper copies will be faxed as well.

Dated: February 16, 2006

By: /s/ Brian T. Kelly
BRIAN T. KELLY
SABITA SINGH
Assistant U.S. Attorneys

EXHIBIT A

SULLIVAN & WALSH
ATTORNEYS AT LAW
51 ELLISON AVENUE
MATTAPAN, MASSACHUSETTS 02126-2803

CORNELIUS J. P. SULLIVAN
(617) 296-0552
BRENDA E. WALSH SULLIVAN
(617) 296-1319

SUSAN E. SULLIVAN
PARALEGAL
(617) 296-4956
FAX: (617) 296-0005

October 20, 2005

Mr. Daniel McNamara
Manager, Customer Service Operations, Area 3
United States Postal Service
Boston, MA 02205-9998

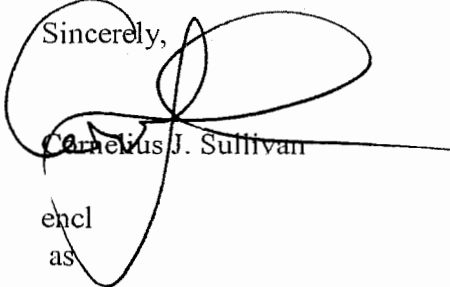
RE: Richard Shipley
Multiple Replies - Bureaucratic Impermeability

Dear Mr. McNamara:

I represent Mr. Shipley in the ever growing postal service snit over my client's attempt to return to work in January of 2005 while the postal inspectors were investigating him for alleged fraud. It appears that the agency did not want to take him back until the investigators were finished investigating. It all sounds like a game of "here I come, ready or not." He was ready to come back to work, the postal service was not ready to take him back. They were more concerned about his efforts to pick up another skill after 20 years of hauling mail on his back.


The only questions I have for you is: "Can you read, and can you draw a reasonable conclusion?" I have appended my correspondence with the agency and your superiors and subordinates. What else is there to say? The facts are clear. The postal service seems to believe that since they have a constitutional monopoly on mail which they exercise to the delight of UPS, Fedex and DHL, they also have a monopoly on counter-productive rules and regulations. Wake up and smell the coffee in the 21st Century, and think before you recite three pages of bureaucratic foolishness premised on my client's failure to inform his superiors of his circumstance. They affirmatively wasted government resources by keeping him in a paid status for 8 months to stroke their egos.

Sincerely,


Cornelius J. Sullivan

encl
as

7004 2890 0004 6317 3862



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SUSAN E. SULLIVAN
PARALEGAL
(617)-296-4956

March 18, 2005

EEO Complaints Processing
USPS, GMF, Rm 3007
Boston MA 02205

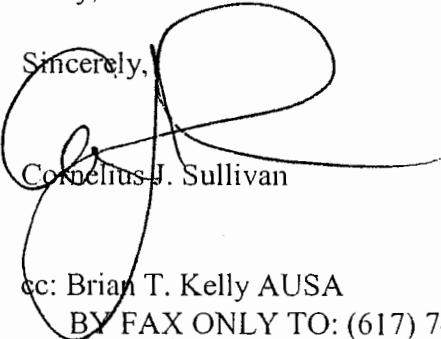
BY FAX ONLY TO: (617) 654-5619

RE: Richard M. Shipley
Letter Carrier, Brookline Post Office

Dear Sir or Madam:

Today this office represents Mr. Shipley. He was re-injured in January of 2004. In January 25, 2005 at his doctor's medical clearance, he met with his supervisor, Sean Pitts, in the Brookline Post Office and his union steward, Joseph Demambro, to return to limited duty. This routine request was unexpectedly not acted upon. This is curious in my practice. The game of "gotcha" was afoot. OWCP then arranged for a independent medical examination late February of 2005. This is curious in my practice. Yesterday, my client learned that the postal inspectors were looking for him. He called the inspector, and learned that an allegation of working while collecting compensation had been made. He looked for a lawyer. He found me, I called the Inspector. The Inspector then referred me to an AUSA. Curious. I then realized that the delay in his return was part of a concerted act of "gotcha". It also amounted to denying my client his job because he was medically unfit to do fulfill duty and build a case. That's discrimination in the delay, and a violation of the EEO. Please initiate counseling.

Sincerely,


Cornelius J. Sullivan

cc: Brian T. Kelly AUSA
BY FAX ONLY TO: (617) 748-3974



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June 14, 2005

Ronald K. Fredey
Manager, Human Resources
United States Postal Service
25 Dorchester Avenue
Boston, MA 02205-9994

BY FAX ONLY TO: (617) 654-5577

RE: Richard Shipley
Your letter 6/10/05

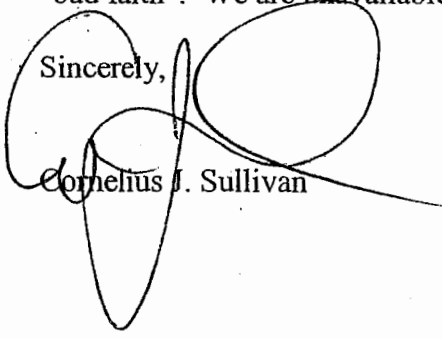
Dear Mr. Fredey:

When words are put in my mouth, I am a stickler for accuracy. My client was cleared for 4 hours per day in January of 2005. A second opinion was conducted by an independent medical examiner in February of 2005 and my client was found to be able to work for 8 hours per day with restrictions. In this chronicle. It would be wise to enclose my letter of 3/18/05 which I now have filed as the "Gotcha Missive to the Heathens".

In April my client saw Dr. Backer, his treating physician, and he was cleared for full duty without restriction. The agency over which you are the local Czar countered with a requirement for a functional capacity evaluation on May 24, 2005. Like Lazarus from the tomb, Mr. Shipley was found fit. He was happy to hear it, I was happy to hear it. Apparently you and or/your agents didn't hear it. In short there is no medical reason for a reasonable accommodation.

I would be less than candid if I did not observe that the agency cannot grasp recovery. He is recovered, and wants to go to work. I will take the cascading bureaucratic communication as "bad faith". We are unavailable for a meeting with no legitimate purpose.

Sincerely,


Cornelius J. Sullivan

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June 15, 2005

Lorraine F. Leblanc
Claims Examiner
OWCP, JFK Federal Building
Boston, MA

BY FAX ONLY TO: (617) 624-6604

RE: Richard Michael Shipley
File Number 012021995
Schedule "C" 2004

Dear Ms. Leblanc:

This office represents Mr. Shipley, Authorization to Represent, attached. I have also taken the liberty of attaching related correspondence with the post office. My client was cleared for partial duty in January of 2005. It seems the postal inspectors felt that my client was working another job outside of his restrictions. I was retained (3/18/05) when they left their calling card at his door. It seems he sold real estate from his house in 2004. I have attached his 2004 Schedule "C" wherein he has declared a profit of \$2,014 for the year. If you would be so kind as to send him a new CA-7 he will make that disclosure on the proper form. Unfortunately, the last CA-7 he received and filled out was in March of 2004. If he owes any money, he will be pleased to forward that to you once the agency allows him back to work.

I am sorry for any confusion, but the agency tried to build a case where only a misunderstanding existed. If I can be of assistance, please call.

Sincerely,



Cornelius J. Sullivan

cc: client

ICCO by fax only to: (617) 654-5449

1c

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June 15, 2005

Michael O. King
Manager
Brookline Post Office
Brookline, MA

BY FAX ONLY TO: (617) 738-8494

RE: Status of Richard Shipley
PDI Conducted This Date

Dear Mr. King:

I thank you for allowing me to participate with my client in the PDI. You presumably will have to make a decision on my clients return to work. I would not want you to make the decision in a vacuum. I have attached faxes to the post office over the last few months which will give you information about the pattern of obfuscation by the agency about my client's willingness to come to work. Please review the material before you make a decision. I have also attached his Schedule C from his 2004 income tax return. He netted \$2,014 from his real estate work.

On another note, my client is anxious to return to work. If he does not hear by close of business Thursday, he will assume that he should apply for unemployment with the Commonwealth of Massachusetts

Sincerely,

Cornelius J. Sullivan

cc: client

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